

SOUTH AFRICA / JUDGMENT

Cape Law Society v Muhamed (4568/2016) [2017] ZAWCHC 29 (24 March 2017) [2017] ZAWCHC 29

COURT

Western Cape High Court, Cape Town

BEFORE

Rogers, Dolamo

CASE / FILE NUMBER

4568/2016

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THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE
DIVISION, CAPE TOWN)

In

the matter

between Case

No: 4568/2016

THE

CAPE LAW

SOCIETY APPLICANT

and

PATEL

MUHAMED RESPONDENT

Coram:

ROGERS & DOLAMO JJ

Heard:

24 MARCH 2017

Delivered:

24 MARCH 2017

JUDGMENT

ROGERS J (DOLAMO J concurring):

[1] This is an application to have the respondent's name struck off the roll of attorneys and for ancillary relief. Mr Koen appears for the applicant. Although the respondent filed a notice of opposition and answering papers, he did not respond to supplementary founding papers delivered by the applicant and did not appear, in person or through counsel, at the hearings of this matter on 17 February 2017 and today (24 March 2017).

[2] If the respondent is to be believed, he has over the years gone variously under the names Patel Muhamed (the one used in the above citation), Mohamed Ismail and Muhamed Ismail Patel. He says the third of these is his real name. Due to the racial distinctions

then applicable, his father chose to register his family as Malay rather than Indian. This was achieved inter alia by dropping the name Patel when the children were registered. The respondent's first registered name was Mohamed Ismail with ID number 44[...]. Many years later he applied to correct his registration so as to read Muhamed Ismail Patel but, through an administrative bungle, he was issued with an ID document in the name of Patel Muhamed and ID number 49[...]. During March 2013 he ascertained to his astonishment that according to the records of the Department of Home Affairs he was deceased. He is still battling to regularise his registration.

[3] It was under the first of these three names that the respondent applied for admission as an attorney. He has, however, used the third name (the one he says is his true name) in proceedings in Gauteng.

[4] The respondent was admitted as an attorney of this court on 2 December 2011. He practised in partnership and then for his own account until 19 February 2016, when he was interdicted from practising pending the determination of a striking-off application. Apart from his legal practice, the respondent has been active as a liquidator and trustee in insolvency matters.

[5] The interdict application was issued on 22 December

2015. The application was based on an allegation that, contrary to the content of the respondent's admission application, he had not graduated with a law degree from the University of the Western Cape in 1994 or at all and that the academic record attached to the admission application was not the respondent's record but that

of another student.

[6] The respondent opposed the application and filed answering papers. After several postponements, the respondent on 19 February 2016 agreed to an order interdicting him from practice pending the determination of a striking-off application to be launched by 31 March 2016. In his opposing affidavit he denied the applicant's allegations. The agreed interdict granted him leave to apply, on 48 hours' notice, for the discharge of the interdict.

This was presumably to deal with the eventuality of his procuring satisfactory proof of his degree, the original certificate of which he could not at that stage locate.

- [7] The applicant launched an application for the appointment of a curator, such order being granted on 2 March 2016.
- [8] The striking-off application was issued on 16 March
- 2016. The respondent filed a notice of opposition followed by an answering affidavit on 4 May 2016. In his affidavit he said that on 16 March 2016 (coincidentally the date on which the striking-off application was issued) he had eventually found his original degree certificate in the court file of a North Gauteng case in which he had applied to be enrolled in that court. This allegation was confirmed by a registry clerk from Pretoria. The respondent said he would produce the original degree certificate at the hearing of the striking-off application (because he did not appear, he has not produced the original certificate). The respondent dealt at length with the allegation that he had not obtained a law degree at the University of with the Western Cape, denying all the essential averments in the founding papers.
- [9] The respondent caused the striking-off application to be set down for Monday 21 November 2016. This was irregular in view of the well-known practice in this court that striking-off applications are heard by two judges on Fridays. The matter did not proceed on that date.
- [10] On 11 November 2016 the applicant served an application for leave to supplement the grounds for the respondent's striking-off. In essence, the supplementary grounds were that the respondent had failed to comply with the curatorship order and that he had misappropriated trust funds, including substantial amounts where he held appointments as liquidator or trustee.
- [11] On 1 December 2016 a notice of set down was issued for the hearing of this matter before two judges on Friday 17 February 2016.
- [12] On 14 December 2016 the respondent's estate was provisionally sequestrated on the application of a co-trustee in an insolvency matter, with a return day of 31 January 2017. The respondent opposed the application on the return day and by agreement it was postponed for hearing on the semi-urgent roll on 18 April 2017.
- [13] When the matter served before us on 17 February 2017 there was no appearance for the respondent. If the respondent were able to challenge the allegations made in the applicant's supplementary papers, one would have expected him by this stage to have done so. No attorney would want to leave the serious allegations unanswered.
- [14] Be that as it may, and because the respondent might perhaps have thought that the hearing of 17 February 2017 would not go beyond the question whether the supplementary affidavits should be allowed, we decided to proceed cautiously. In the absence of opposition, we granted the applicant's application for leave to file the supplementary papers and gave

directions for the service of our order on the respondent. The order informed the respondent that he should file his supplementary answering papers, if any, within 15 days from date of service of the order. The order further informed him that if he failed to file supplementary answering papers the main application would be heard on Friday 24 March 2017.

[15] The order was duly served in the manner we directed, namely by delivery to the respondent's attorneys of record in the present case and to his attorneys of record in the sequestration proceedings and by service by the sheriff at the respondent's residential address. The respondent has not filed supplementary answering papers and, as noted, he did not appear when the matter was called on Friday 24 March 2017.

[16] Despite the respondent's absence, it would not be possible, without oral evidence, to resolve the factual disputes relating to his academic qualifications and degree.

[17] However the allegations made in the supplementary papers are unanswered. In regard to the respondent's non-compliance with the curatorship order, the curator, Mr Hangone, attests that the respondent failed to hand over his books of account, records, files

and documents pertaining to monies received, held or paid for or on account of any person, as required by para 2.1 of the order. The applicant makes the point that if the documents in question do not exist, the respondent has failed to keep proper accounting records as required by s 78(4) of the Attorneys Act 53 of 1979, such failure constituting a criminal offence. So there has either been defiance of a court order or a criminal contravention.

[18] Mr Hangone ascertained, further, that on 19 February 2016 – the very date on which the respondent agreed to an interdict – he transferred the full amount then standing to the credit of his trust bank account (an amount of some R2,5 million) to another trust account, the details of which he has failed to disclose to the applicant.

[19] Finally, Mr Hangone's investigations established that the respondent misappropriated trust funds received by him from a Mrs Gerntholtz to whom he had sold a property belonging to himself. In terms of the deed of sale the monies paid by Mrs Gerntholtz had to be invested in a special interest-bearing trust account until transfer. The respondent failed so to invest her deposit. Furthermore

he misappropriated R102 030 in order to pay the rates on the property and R3510 to pay a monthly levy. A further amount of R38 200 was misappropriated to pay the advocate briefed by him in the interdict application. (The Gerntholtz transaction is the only file the curator received in connection with the respondent's practice. Whether there were irregularities in other matters handled by him is thus unknown.)

[20] A further supplementary ground for the respondent's striking-off is based on an affidavit by Daniel Terblanche, an insolvency practitioner. Terblanche and one Petersen are the co-liquidators of Crimson Moon Investment 32 CC ('Crimson Moon'). The respondent was formerly one of the co-liquidators but was removed by the Master on 1 August 2016.

Crimson Moon was provisionally liquidated as long ago as 20 October 2010. The respondent was the practitioner dealing actively with the administration but refused to cooperate with his co-liquidators.

[21] During the latter part of May 2016 Terblanche became aware that on 20 November 2015 the respondent had caused an amount of R3,4 million to be transferred from the Crimson Moon estate account held at Standard Bank to a business account of Good Hope Trustees, the firm through which respondent conducts business as an insolvency practitioner. This occurred without the knowledge of the co-liquidators.

[22] Following a complaint to the Master, the latter called on the respondent to furnish an explanation. In a response dated 21 June 2016 the respondent told the Master that the money had been transferred to his business account due to an administrative error,

that the error had been corrected and that the money was now invested in an interest-bearing account with Absa. The Master asked the respondent to provide particulars of the Absa account which the respondent purported to do in a letter dated 7 July 2016. However

Absa, in an affidavit by a specialist in its Private Bank and Retail Wealth Insolvencies Division, has stated that there is no such account at Absa and that the bank has not been able to trace an account corresponding to the statements furnished by the respondent.

[23] The applicant says that it is apparent from these facts that the Crimson Moon money has been stolen by the respondent and that he has tried to conceal the theft by producing concocted bank statements.

[24] Finally, the applicant refers to an application launched by Absa on 8 November 2016 under Case No 218516 in which Absa alleges that the respondent has misappropriated several million rands from an estate bank account in the Coe Family Trust insolvency, and that

secured and confirmed dividends to which Absa is entitled in other insolvent estates, also running into several million rands, have been misappropriated by him. The affidavits in the court file in case 218516, which I have examined, amply bear out what the applicant says.

[25] It appears from the court file that the respondent was represented by counsel, Mr Zimmerman, when the matter was called on 17 November

2016. Counsel said that the respondent was out of the country and that he could not obtain instructions. He informed the judge, Holderness AJ, that the respondent consented to certain of the relief claimed in the notice of motion but required time to file an answering affidavit in opposition to the application for his removal as a trustee of the Coe Family Trust estate. The judge said that, in the light of the serious allegations of misconduct levelled at the respondent and indications that trust monies had been misappropriated, she required independent confirmation of where the estate monies were being held and an appropriate undertaking for their safekeeping in a separate trust account. The matter stood down to allow counsel to obtain instructions. When the matter resumed, counsel indicated that the

respondent now no longer agreed to the granting of any relief and that his instructions were to withdraw from the matter. There was no disclosure as to the whereabouts of the funds or any undertaking regarding their safekeeping.

[26] After hearing argument by senior counsel for the bank, the judge proceeded to make an order removing Patel as a joint trustee of the insolvent estate of the Coe Family Trust and ordering him to deliver to his co-trustee all the books and documents relating

to the estate. He was called upon to show cause why he should not pay the costs of the application de bonis propriis. On 15 December 2016 a further order was made directing him to pay the costs of the application de bonis propriis and dismissing his application for leave to appeal the order of 17 November 2016.

[27] The respondent has not answered any of these serious supplementary allegations. There is unanswered evidence of a misappropriation of trust funds as an attorney in relation to the single file made available to the curator and of further substantial misappropriations and dishonesty as an insolvency practitioner. It is irrelevant that the greater part of these misappropriations were committed by him as an insolvency practitioner rather than a legal practitioner. The courts expect attorneys to be scrupulously honest. A person who steals money and behaves fraudulently in whatsoever capacity is not a person who can be allowed to remain on the roll of attorneys.

[28] In the circumstances we are satisfied that the respondent is not a fit and proper person to practice as an attorney, that his name should be struck off the roll of attorneys of this court and that the ancillary relief sought by the applicant should be granted.

[29] I make the following order: (i) The respondent's name is struck off the roll of attorneys of this court. (ii) Ancillary orders are made in accordance with paras 2 - 12 of the notice of motion. (iii) In regard to para 11.3 of the notice of motion, the costs shall include the costs of the appearance on 17 February 2017.

ROGERS J

DOLAMO J

APPEARANCES

For Applicant Mr S Koen Bisset Boehmke & McBlain 3rd Floor, 45 Buitengracht Street Cape Town

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